



STATE OF INDIANA

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June 3, 2015

Ms. Alice Butler
1773 Summerlin Pl.
Jeffersonville, IN 47130

Ms. Kelly Khuri
4819 Salem Noble Rd.
Jeffersonville, IN 47130

Re: Formal Complaint 15-FC-149; Alleged Violation of the Access to Public Records Act by the Greater Clark County School Corporation

Dear Ms. Butler and Ms. Khuri,

This advisory opinion is in response to your formal complaints alleging Greater Clark County School Corporation ("School Corporation") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* As of the filing of this complaint, the Corporation has not responded, despite an invitation to do so on May 1, 2015. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 30, 2015.

BACKGROUND

Your complaint dated April 30, 2015 alleges the Greater Clark County School Corporation violated the Access to Public Records Act by failing to provide requested files within a reasonable amount of time. The complaint filed on May 28, 2015 further alleges the Greater Clark County School Corporation denied access to public records by refusing to provide a full copy of the feasibility study.

On April 1, 2015, you made APRA requests to the School Corporation. You are seeking a copy of a feasibility study ("Study"), which was completed in February of 2014. Your request was acknowledged on April 3, 2015. On April 24, 2015, you were informed the Corporation was still working on your request. The Study was a condition precedent to a proposed referendum for shuttering school facilities.

Some information was provided to you, however, as to the entirety of the feasibility study, the School cited Ind. Code § 5-14-3-4(b)(6), the interagency deliberative materials exemption, in refusing to release the full Study.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. School corporations are included in the definition of agencies subject to the APRA; therefore, Greater Clark County School Corporation is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the School Corporation’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

The School Corporation claims the feasibility study falls under Ind. Code § 5-17-3-4(b)(6),

Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

If the Study meets this definition, the School would have the discretion and the choice as to whether it will be disclosed. Studies of this nature, often created by a third-party contractor, are often used for decision-making purposes. As such, they are often withheld from public disclosure.

While the School Corporation undoubtedly benefited from the information in the Study, so too would the public ostensibly benefit from the release. The ultimate decision-making function is presumably left to the community who will be voting on the measures proposed by the School Corporation via a referendum. It stands to reason any person voting on this matter should be allowed to educate themselves on the issue as necessary and to the fullest extent in order to render an educated conclusion prior to voting.

The Study is deliberative material and the School Corporation has the discretion to withhold it. But just because it can, does not necessarily mean it should. I encourage the School Corporation to revisit the issue to determine if the release of the document would truly compromise the integrity of the decision-making process and frank interagency deliberations.

CONCLUSION

For the foregoing reasons, it is the opinion of the Public Access Counselor the Greater Clark County School Corporation has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor